

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 31, 2011

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-11-2892; TCEQ Docket No. 2010-1241-PWS-E;
Executive Director of the Texas Commission on Environmental Quality v.
Arthur Thompson Post No. 8905 Veterans of Foreign Wars of the United States,
Cypress, Texas

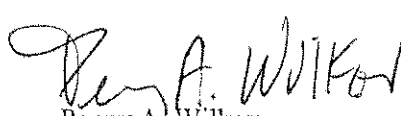
Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than September 20, 2011. Any replies to exceptions or briefs must be filed in the same manner no later than September 30, 2011.

This matter has been designated **TCEQ Docket No. 2010-1241-PWS-E; SOAH Docket No. 582-11-2892**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,


Penny A. Wilkov
Administrative Law Judge

PAW/ap
Enclosures
cc: Mailing List

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SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: ARTHUR THOMPSON POST NO 8905 VETERANS OF FOREIGN
WARS OF THE US CYPRESS
SOAH DOCKET NUMBER: 582-11-2892
REFERRING AGENCY CASE: 2010-1241-PWS-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE
ALJ PENNY WILKOV

REPRESENTATIVE / ADDRESS

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ARTHUR THOMPSON POST NO. 8905 VETERANS OF
FOREIGN WARS OF THE UNITED STATES, CYPRESS,
TEXAS

SOAH DOCKET NO. 582-11-2892
TCEQ DOCKET NO. 2010-1241-PWS-E

**EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
Petitioner**

V.

**ARTHUR THOMPSON POST
NO. 8905 VETERANS OF FOREIGN
WARS OF THE UNITED STATES,
CYPRESS, TEXAS,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) brought this enforcement action against Arthur Thompson Post No. 8905 Veterans of Foreign Wars of the United States, Cypress, Texas (Respondent or VFW Post No. 8905) seeking penalties based on ten violations: (1) failure to collect routine water samples for bacteriological monitoring analysis on its public water system for ten months, including June and October 2008; January, May, July, August, September, November, and December 2009; and January 2010, and (2) failure to provide public notification of the failure to monitor for each of those same months. The ED requests imposition of an administrative penalty of \$4,375.00 and a requirement that Respondent implement corrective measures.

Respondent contends that it was in violation for only seven of the ten months alleged by the Commission because the Houston Department of Health and Human Services (Houston Health Department) obtained samples during the months of January and May 2009 and January 2010, as part of a food establishment safety inspection. Further, Respondent, a non-profit organization, asserts that the penalty calculated by the Commission is excessive and would result in harm to the community of Cypress, Texas.

The Administrative Law Judge (ALJ) agrees with the ED's recommendation to assess an administrative penalty of \$4,375.00 for ten violations and to require corrective actions.

II. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

On July 19, 2011, ALJ Penny A. Wilkov convened a hearing at the hearing facilities of the State Office of Administrative Hearings, William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. The ED was represented by TCEQ Litigation Division Attorneys Tammy L. Mitchell and Steven M. Fishburn. Respondent was represented by Jack K. Andrews, Commander of VFW Post No. 8905. The Office of Public Interest Counsel did not participate in the hearing. The ALJ closed the record at the conclusion of the hearing.

There were no contested issues of notice or jurisdiction in this case. Therefore those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

III. OVERVIEW

A. Public Water System

VFW Post No. 8905 is a social/fraternal hall located in Cypress, Texas, and has two relevant activities related to its non-profit operations: operating a water supply corporation and conducting charitable bingo.¹ According to TCEQ's records, Respondent's water supply corporation uses groundwater from a well, has one active service connection, and serves 50 people daily.²

As defined, a public water system must provide water for human consumption through pipes or other constructed conveyances and must serve at least 25 individuals at least 60 days out

¹ Resp. Ex. 1.

² ED Ex. 1, pp. 21-23.

of the year.³ Because Respondent's water supply corporation meets this requirement, it is a public water system.⁴

B. Public Water System Regulations

1. Monitoring

At least once per month, the owner or manager of a public water system that supplies water to less than 25,000 persons must submit to the Commission a water specimen for bacteriological analysis.⁵ The bacteriological analysis samples are tested for total coliform, fecal coliform, *E coli*, or other fecal indicator organisms, and must be collected at a frequency and location as determined by the ED.⁶ The ED requires that public water systems take samples based on the population served by the system, calculated by the maximum number of persons served on any given day during the month.⁷ Because Respondent operates a public water system with a population from 1 to 1,000 served, the minimum sampling frequency is one sample per month.⁸ A public water system that fails to provide the required number of coliform samples commits a monitoring violation.⁹

2. Reporting

A public water system that has failed to comply with a coliform monitoring requirement must report the monitoring violation to the ED within ten days after the system discovers the

³ 30 TEX. ADMIN. CODE (Code) § 290.38(66).

⁴ ED Ex. 1, p. 21-23 and Ex. 2, Tab B.

⁵ TEX. HEALTH & SAFETY CODE ANN. (Health & Safety Code) § 341.033(d).

⁶ Code § 290.109(c).

⁷ Code § 290.109(c)(2)(A)(i).

⁸ Code § 290.109(c)(2)(A)(iii).

⁹ Code § 290.109(f)(5).

violation and provide public notification of its failure to monitor.¹⁰ Public notification must be issued within three months of the violation and is to be provided to the persons served by the system either by direct delivery of the notice, by newspaper publication, or by continuously posting the notice in conspicuous places within the area served by the system.¹¹ A public water system that fails to provide the required number of coliform samples commits a reporting violation.¹²

IV. THE VIOLATIONS

A. Monitoring Violation

Sally Paramo, a TCEQ Natural Resources Specialist, testified that she conducted a record review investigation on VFW Post No. 8905 for compliance with monitoring requirements. The records review investigation consisted of collecting site and operation information provided by the TCEQ field office; researching ownership and affiliation information from tax records and Secretary of State filings; and examining the Safe Drinking Water Information Services (SDWIS) database. The SDWIS database contains records concerning a public water system's operations, monitoring results, compliance, and enforcement records.

According to Ms. Paramo, a public water system must adhere to the following protocol:

- a water sample is collected by the water system;
- the sample is submitted by the water system to a TCEQ-certified laboratory;
- the water system submits sample collection information to the lab;
- the lab analyzes the sample for bacteria;
- the lab reports the results to TCEQ and the water system; and
- TCEQ enters the information into the SDWIS database.

¹⁰ Code § 290.122(c).

¹¹ Code § 290.122(c)(2)(A).

¹² Code § 290.109(f)(8).

Ms. Palermo reviewed the SDWIS database and found that no sample had been reported by the lab or by Respondent for ten months: June and October 2008; January, May, July, August, September, November, and December 2009; and January 2010.¹³ She testified that even if a sample shows no contamination in a prior month, it is necessary to re-test monthly because bacteria may enter the system through a broken pipe, for instance, and affect human health.

According to Ms. Palermo if the system has a restaurant or food establishment then the local health department may also require sampling. The local health departments, however, do not coordinate with TCEQ so those results would not be entered into the database automatically. If the local health department lab results are later supplied by a water system, the sample must be shown as suitable for analysis or it will not be accepted by TCEQ. Lastly, Ms. Palermo testified that Respondent has returned to full compliance with routine monthly samples.

Mr. Mathew Hammil, the former Commander of VFW Post No. 8905 from 2004 until 2008, testified that he was responsible for collecting and delivering the samples to the lab. According to Mr. Hammil, no coliform has ever been found in any sample.

Jack K. Andrews, the current Commander of VFW Post No. 8905, produced records that the Houston Health Department performed an analysis of a water sample in January and May 2009, and January 2010.¹⁴ The lab reports, however, indicate that the samples were unsuitable for analysis because the samples did not contain evidence of chlorination. Mr. Andrews, nevertheless, maintained that VFW Post No. 8905 should not be subject to any penalty for these months because it put forth an effort to comply with the rules and regulations by submitting the sample to the Houston Health Department and TCEQ.

¹³ ED Exs. 2 and 3.

¹⁴ January and December 2008 lab reports were also submitted, but were not in issue in this hearing.

B. Public Notice Violation

Ms. Palermo testified when a notice of monitoring violation is sent to a public water system, the mandatory language concerning public notification is also included. The letter states that the water system must publish notice in a local newspaper in the area served by the water system, mail a notice to each customer, or post notices in conspicuous places within the service area.¹⁵ Copies of the public notice and certificate of delivery must then be filed with TCEQ within 10 days. According to Ms. Palermo, the public water system did not provide proof of public notification for June and October 2008; January, May, July, August, September, November, and December 2009; and January 2010.¹⁶ Ms. Palermo pointed out that notification is necessary to allow the public to take precautions from potentially dangerous water.

C. Analysis

The ALJ is persuaded that Respondent did not satisfactorily conduct the required bacteriological monitoring for its water system. The testimony established, and the Respondent did not controvert, that it did not complete monitoring for seven months. The only controversy was whether the Houston Health Department sampling satisfied TCEQ's sampling and reporting requirements for the months of January and May 2009; and January 2010. Each of these samples, however, was not demonstrated to be satisfactory samples: (1) the May 2009 sample and laboratory report did not show a disinfectant residual (chlorine) level,¹⁷ although all public water systems must have a minimum concentration of at least 0.2 milligram per liter (mg/L) free chlorine or 0.5 mg/L chloramine;¹⁸ (2) the January 2009 sample and laboratory report did not show a disinfectant residual level and the laboratory report was marked "Unsuitable for Analysis" because there was no chlorine residual level;¹⁹ and (3) the January 2010 sample and

¹⁵ ED Ex. 1.

¹⁶ ED Ex. 3.

¹⁷ Resp. Ex. 2, p. 1.

¹⁸ Code § 290.110 (b)(2).

¹⁹ Resp. Ex. 2, p. 2.

laboratory report did not show a disinfectant residual level and the laboratory report was marked “Unsuitable for Analysis.”²⁰

Because public health is at risk when there is either no or incomplete sampling, Respondent must be held to a rigorous standard of compliance with the water safety statute and rules. Sampling must be uniformly collected, tested, and reported, rather than left to each water system to substantially comply as it deems acceptable. TCEQ has a well-defined protocol and it was not shown that the Houston Health Department samples, marked as unsuitable for analysis, adhered to that procedure.

Further, when a public water system fails to monitor, the public must be notified so that precautions can be implemented. Respondent did not dispute that it failed to notify the public of the failure to monitor.

V. THE PENALTY

To determine an appropriate penalty, various factors are to be considered, as outlined in Health & Safety Code § 341.049 and Water Code § 7.053. To implement the statutory requirements, the Commission adopted a penalty policy in September 2002 (Penalty Policy). Specifically, Texas Water Code § 7.053 requires the Commission to consider the following factors when determining the amount of an administrative penalty:

- The violation’s impact or potential impact on public health and safety, natural resources and their uses, and other persons;
- The nature, circumstances, extent, duration, and gravity of the prohibited act;
- The history and extent of previous violations by the violator;
- The violator’s degree of culpability, good faith, and economic benefit gained through the violation;
- The amount necessary to deter future violations; and

²⁰ Resp. Ex. 2, p. 3.

- Any other matters that justice may require.

TCEQ has directed that the penalty calculation be calculated by starting at the statutory maximum and then reducing and/or escalating the penalty based on culpability, economic benefit, good faith efforts to comply, and other factors as justice may require.²¹

Andrea Linson, an Enforcement Coordinator for TCEQ, testified that Respondent should pay a \$4,375.00 penalty, pursuant to the penalty policy, for failing to collect monthly routine distribution water samples for coliform analysis and failing to provide public notification of the failure to sample. Specifically, Ms. Linson testified that the penalty for Respondent was calculated based on the following information:

- The base penalty was \$1,000.00, the maximum penalty provided for each day of violation;²²
- Respondent's failure to monitor had only the potential to cause major harm to human health, which resulted in a 25% reduction of the base penalty or \$250.00 per event (\$1,000.00 x 25%);²³
- Respondent failed to perform required monitoring for 10 different months (from June 2008 through January 2010), resulting in a \$2,500.00 base penalty (\$250.00 x 10 events);
- Good faith efforts to comply were not applicable because Respondent could not provide retroactive monthly samples;
- Respondent had a prior agreed order entered on August 23, 2006,²⁴ for similar monitoring and public notification violations, resulting in a 25% adjustment to the base penalty of \$2,500.00 or \$625.00 in additional penalties;
- Respondent had 10 NOVs, resulting in a 50% adjustment to the base penalty of \$2,500.00 or \$1,250.00 in additional penalties;

²¹ ED Ex. 8.

²² Health & Safety Code § 341.048(b).

²³ There was no evidence of actual contamination, although major pollutant exposure could have occurred.

²⁴ ED Ex. 7.

- Respondent's total adjusted penalty was \$4,375.00 (\$2,500.00 base penalty + \$1,875.00 additional penalties); and
- Justice does not require a further penalty adjustment.

Mr. Andrews produced a ledger for VFW Post No. 8905 which showed that from January 1, to March 31, 2008, it collected \$96,663.67 in bingo revenue, but had \$110,000.00 in disbursements for salaries and other bingo-related expenses.²⁵ Similarly, Respondent's tax returns showed that in 2009, it collected \$157,983.00 in bingo revenue but only had a gross profit of \$4,880.00. In 2010, the income was \$282,000.00, but it only had a gross profit of \$732.00.

Mr. Andrews testified that VFW Post No. 8905 spent its revenue on charitable efforts to benefit the community of Cypress, Texas. Therefore, Mr. Andrews argued that it is unfair to require Respondent to pay the penalty because it would harm the community of Cypress, Texas, which is the beneficiary of the charitable activities. Further, given the fact that Respondent is presently in compliance with regard to the sampling, justice should require that the penalty be reduced or waived.

The ALJ is persuaded that the penalty of \$4,375.00 is just and reasonable, considering that Respondent has had a prior Agreed Order in 2006 for identical violations, has received 10 NOVs from the present case, continued to violate the routine testing requirements, and has the financial ability to pay the penalty.

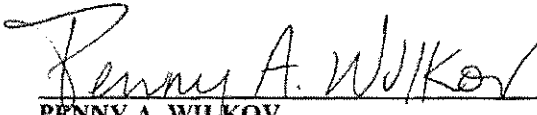
VI. RECOMMENDATION

After a review of the record and for the reasons given, it is recommended that the Commission find Respondent liable for the violations asserted by the ED and assess a penalty of \$4,375.00 for the violations. It is also recommended that the corrective action sought by the ED

²⁵ Resp. Ex. 1.

be implemented. There was no dispute concerning the corrective actions. A draft order incorporating these recommendations is attached to this Proposal for Decision.

SIGNED August 31, 2011.



PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER

**Assessing Administrative Penalties against
and Requiring Corrective Action by
ARTHUR THOMPSON POST NO. 8905
VETERANS OF FOREIGN WARS OF THE UNITED STATES, CYPRESS, TEXAS
TCEQ DOCKET NO. 2010-1241-PWS-E
SOAH DOCKET NO. 582-11-2892**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against and requiring corrective action by Arthur Thompson Post No. 8905 Veterans of Foreign Wars of the United States, Cypress, Texas (Respondent or VFW Post No. 8905). A Proposal for Decision (PFD) was presented by Penny A. Wilkov, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a public hearing concerning the EDPRP on July 19, 2011.

After considering the PFD, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. VFW Post No. 8905 is a social/fraternal hall located in Cypress, Texas and has two relevant activities related to its non-profit operations: owning and operating a water supply corporation and conducting charitable bingo.

2. Respondent's water supply corporation uses groundwater from a well, has one active service connection, and serves 50 people daily, and as such, qualifies as a public water system as defined in 30 TEX. ADMIN. CODE (TAC) § 290.38(66).
3. During a record review investigation, a TCEQ Natural Resource Specialist documented that Respondent failed to collect routine distribution samples for coliform analysis and failed to provide public notice of the failure to sample for the months of June and October 2008; January, May, July, August, September, November, and December 2009; and January 2010.
4. On December 3, 2010, the Executive Director (ED) filed the EDPRP in accordance with TEX. HEALTH & SAFETY CODE ANN. § 341.049(c), alleging that Respondent failed to collect routine distribution samples for coliform analysis and failed to provide public notice of the failure to sample for the months of June and October 2008; January, May, July, August, September, November, and December 2009; and January 2010, in violation of TEX. HEALTH & SAFETY CODE ANN. § 341.033(d) and 30 TAC §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B).
5. The ED recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$4,375.00 against Respondent and requiring corrective action by Respondent.
6. The total proposed administrative penalty of \$4,375.00 was calculated as follows:
 - a. The base penalty began as \$1,000.00, the maximum penalty provided for each day of violation;
 - b. Respondent's failure to monitor had the potential, but did not actually, cause major harm to human health, which resulted in a 25% reduction of the base penalty or \$250.00 per event (\$1,000.00 x 25%);

- c. Respondent failed to perform required monitoring for 10 different months (from June 2008 through January 2010), resulting in a \$2,500.00 base penalty (\$250.00 x 10 events);
 - d. Good faith efforts to comply were not applicable because Respondent could not provide retroactive monthly samples;
 - e. Respondent had a prior agreed order entered on August 23, 2006, for similar monitoring and public notification violations, resulting in a 25% enhancement to the base penalty of \$2,500.00 or \$625.00 in additional penalties;
 - f. Respondent had 10 Notice of Violations (NOVs), resulting in a 50% enhancement to the base penalty of \$2,500.00 or \$1,250.00 in additional penalties;
 - g. Respondent's total adjusted penalty was \$4,375.00 (\$2,500.00 base penalty + \$1,875.00 additional penalties); and
 - h. Justice does not require a further penalty adjustment.
- 7. The ED recommended that Respondent be required to implement corrective measures to begin complying with applicable coliform monitoring requirements; to implement procedures to ensure that all necessary public notifications are provided in a timely manner to customers of the water system; and to submit written certification and supporting documentation to demonstrate compliance.
 - 8. On December 3, 2010, the ED mailed a copy of the EDPRP to Respondent at its last address of record with the Commission.
 - 9. On December 13, 2010, Respondent requested a hearing on the ED's allegations.
 - 10. On January 21, 2011, the ED asked the Commission's Chief Clerk to refer this case to SOAH for hearing, which she did.

11. On February 3, 2011, the Chief Clerk mailed a notice of hearing to Respondent, the ED, and the Office of Public Interest Counsel.
12. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
13. On July 19, 2011, ALJ Penny A. Wilkov convened a hearing at the SOAH hearing facilities, William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. The ED was represented by TCEQ Litigation Division Attorneys Tammy L. Mitchell and Steven M. Fishburn. Respondent was represented by Jack K. Andrews, Commander of VFW Post No. 8905. The Office of Public Interest Counsel did not participate in the hearing. The ALJ closed the record at the conclusion of the hearing.
14. The Houston Department of Health and Human Services (Houston Health Department) obtained water samples from Respondent during the months of January and May 2009, and January 2010, as part of a food establishment safety inspection.
15. The Houston Health Department samples for January and May 2009, and January 2010, however, failed to show a disinfectant residual (chlorine) level. As such, the samples were rendered unsuitable for analysis by the Houston Health Department lab and unacceptable to TCEQ to satisfy the requirement to collect monthly routine distribution samples for coliform analysis.
16. Respondent failed to collect suitable routine distribution samples for coliform analysis for the months of June and October 2008; January, May, July, August, September, November, and December 2009; and January 2010.

17. Respondent did not provide public notice of its failure to sample for coliform analysis for the months of June and October 2008; January, May, July, August, September, November, and December 2009; and January 2010.
18. Respondent received NOV letters for each of the same ten months.
19. Respondent had a prior agreed order entered on August 23, 2006, for similar monitoring and public notification violations.
20. Respondent has returned to full compliance with routine monthly samples.
21. An administrative penalty of \$4,375.00 is reasonable and takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in TEX. WATER CODE ANN. § 7.053 and in the Commission's 2002 Penalty Policy.
22. The corrective actions required are reasonable.
23. Respondent has the financial ability to pay the full amount of the penalty, despite the charitable work performed by Respondent for the community of Cypress, Texas.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. WATER CODE ANN. § 5.013 and TEX. HEALTH & SAFETY CODE ANN. § 341.049.
2. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Under TEX. HEALTH & SAFETY CODE ANN. § 341.049, the Commission may assess an administrative penalty against a person who violates a provision of Subchapter C of the Texas Health and Safety Code, or a rule or order adopted thereunder.

4. Under TEX. HEALTH & SAFETY CODE ANN. § 341.049, the penalty may not exceed \$1,000.00 per violation, and each day of a continuing violation may be considered a separate violation.
5. As required by TEX. HEALTH & SAFETY CODE ANN. § 341.049(d) and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations or the penalties proposed therein.
6. As required by TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; TEX. HEALTH & SAFETY CODE ANN. § 341.049(g); 1 TAC §§ 155.401 and 155.501; and 30 TAC §§ 1.11 and 39.25, Respondent was notified of the hearing on the alleged violations and the proposed penalties.
7. 30 TAC § 290.38(66) defines “public water system” as a system for providing the public water for human consumption through pipes or other conveyances. The system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year.
8. TEX. HEALTH & SAFETY CODE § 341.033(d) provides that the owner or manager of a water supply system that furnishes drinking water to less than 25,000 people shall submit to the Commission during each month of the system’s operation at least one specimen of water taken from the supply for bacteriological analysis.
9. TEX. HEALTH & SAFETY CODE ANN. § 341.031 authorizes the Commission to adopt and enforce rules to implement the federal Safe Drinking Water Act.
10. 30 TAC § 290.109(c)(2)(A)(i) requires a public water system serving a population of less than 1,000 to perform routine distribution coliform sampling at least once per month.
11. 30 TAC 290.122(c)(2)(B) requires the operator of a public water system who fails to perform required water monitoring to notify persons served by the system of the failure to perform the required monitoring in a manner reasonably calculated to reach such persons for at least seven days or as long as the violation exists.

12. Respondent's system qualified as a public water system pursuant to the definition at 30 TAC § 290.38(66).
13. Respondent violated TEX. HEALTH & SAFETY CODE ANN. § 341.033(d).
14. In determining the amount of an administrative penalty, TEX. HEALTH & SAFETY CODE ANN. § 341.049(b) requires the Commission to consider several factors including:
 - The nature, circumstances, extent, duration, and gravity of the prohibited acts;
 - The history and extent of previous violations by the violator;
 - The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - The amount necessary to deter future violations; and
 - Any other matters that justice may require.
15. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
16. Based on consideration of the above Findings of Fact, the factors set out in TEX. HEALTH & SAFETY CODE ANN. § 341.049(b), and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for the alleged violations and a total administrative penalty of \$4,375.00 is justified and should be assessed against Respondent.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Arthur Thompson Post No. 8905 Veterans of Foreign Wars of the United States, Cypress, Texas (Respondent) is assessed an administrative penalty of \$4,375.00 for its violations of TEX. HEALTH & SAFETY CODE ANN. § 341.033(d) and 30 TAC §§ 290.109(c)(2)(A)(i) and

290.122(c)(2)(B). The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: Arthur Thompson Post No. 8905 Veterans of Foreign Wars of the United States, Cypress, Texas, Docket No. 2010-1241-PWS-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Within 10 days after the effective date of this Order, Respondent shall begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TAC § 290.109. This provision will be satisfied upon six consecutive months of compliance monitoring and reporting.
3. Within 10 days after the effective date of this Order, Respondent shall implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the water system, in accordance with 30 TAC § 290.122.
4. Within 195 days after the effective date of this Order, Respondent shall submit written certifications as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering

Provisions No. 2 and 3. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

The certification shall be sent to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

with a copy to:

Water Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.
6. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
7. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.

8. As required by TEX. HEALTH & SAFETY CODE ANN. § 341.049(h), the Commission's Chief Clerk shall forward a copy of this Order to Respondent.
9. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman
For the Commission